



**MINUTES OF THE ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS**

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810
October 1, 2015**

The meeting opened at 6:31 p.m.

Present were: David W. Brown, Chair; Neil Magenheim, Clerk; Carol C. McDonough, Kate Bargnesi & Elizabeth Oltman, Members; Denise Bordonaro, Kathy Faulk, Lisa Rechisky, & Tara Wilson, Associate Members.

Petition Number: Z-15-103

Premises Affected: 29 River St

Petitioner: Igo

Relief requested: Variance from Art. VIII, §5.2.8.1.a and/or special permit under Art. VIII, §5.2.8.b to erect a free-standing sign that will exceed the maximum sign area

Members sitting: Brown, Faulk, Rechisky, Bordonaro, Wilson

Brown informed the Board that the applicant had changed their plans to conform to zoning and submitted a request to withdraw without prejudice. Since the application was clocked in with the Town Clerk and even though it was not advertised, he asked the Board to take a formal vote on the requested withdrawal.

Magenheim read an email from Mr. Igo requesting the withdrawal due to the revisions to make the project conforming. Rechisky made a motion to allow the withdrawal without prejudice. Faulk seconded the motion and the Board voted (5-0) to allow the withdrawal without prejudice.

Petition Number: Z-15-105

Premises Affected: 20 William St

Petitioner: Riiff / Schenk

Relief requested: Special permit 3.3.5 and/or variance 4.1.2 to construct addition that will encroach into minimum front yard depth requirement & special permit 3.1.3.F.4 to create family dwelling unit

Members sitting: Brown, Magenheim, McDonough, Oltman, Bargnesi

Alternates: Rechisky, Faulk, Wilson, Bordonaro

Ann Marie Schenk and Daniel Riiff represented themselves in their request to replace and enlarge an existing sunroom and to create a family dwelling unit in the basement for Ms. Schenk's mother, who has been living with them since the beginning of the year. The house is located on a corner lot. The proposed additions and alterations will not meet the minimum front setback on the paper street which runs along the side of their house, providing access to another lot. Brown informed the petitioners of the restrictions for family dwelling units: 5 year limit, renewable, specific to Maureen Schenk, not transferable, cook top to be removed when Mrs. Schenk no longer occupies the unit. They've spoken with the builder for the rear abutter. There are some large trees that provide screening. Mr. Riiff submitted an aerial photo of the neighborhood. There being no other questions or comments from the Board or the public, Magenheim made a motion to waive the site view and to close the public hearing. McDonough seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board deliberated.

Brown noted that the house was built in 1912, predating the zoning bylaw, with less than 30' front setback at the time of construction establishing it as a pre-existing, non-conforming structure. Bargnesi made a motion to

make the finding that the premises is pre-existing, non-conforming, did not conform at the time the zoning bylaw was enacted or now and to grant a special permit under Art. VIII, §3.3.5. Oltman seconded the motion and the Board voted (5-0) to find that the house is pre-existing non-conforming. Oltman made a motion to deny the variance from Art. VIII, §4.1.2 as moot. Magenheim seconded the motion and the Board voted (5-0) to deny the variance as moot. Bargnesi made a motion to grant the special permit under Art. VIII, §3.1.3.F.4 with the usual conditions. Magenheim seconded the motion and the Board voted (5-0) to grant the special permit with conditions. Oltman will write the decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Certified Plot Plan for 20 William Street, prepared by Stephen E. Stapinski, R.L.S., dated 8/24/15.
- Floor plans & elevation drawings, 5 pages, prepared by I.S. Hernandez Design Services, Inc., 4-8-15, as revised 8-20-15.

Petition Number: Z-15-106

Premises Affected: 50 Lucerne Dr

Petitioner: Macy

Relief requested: Special permit §3.3.5 and/or variances §§4.1.2 and/or 4.1.3.2.b to construct additions and alterations that will encroach into the minimum front yard depth requirement

Members sitting: Brown, Magenheim, McDonough, Oltman, Bargnesi

Alternates: Rechisky, Faulk, Wilson, Bordonaro

Peter & Margaret Macy appeared before the Board on their own behalf. They purchased the house at 50 Lucerne Drive in 2004 and now plan to construct additions and alterations to create additional living space. The roofline of the house will be altered to create an additional bedroom on the second floor where a small study now exists. The existing garage will be converted into a front entry and an expanded first-floor bathroom. A small storage area for trash and recycling containers will be built off what is now the front doorway to the family room. The Macys propose to relocate the front door to the newly-created entry space and to add a covered porch measuring approximately 20.5 feet by 6 feet along the front of the house to the north of the existing garage.

The existing house is located on a shallow lot that is about 100 feet deep at its greatest point and has an area of 15,133 square feet. The lot has frontage to the east and north on Lucerne Drive, which curves around the lot. The existing front setback to the garage, the part of the house nearest to the street, is 29.5 feet. All of the proposed additions to the building, including the expanded second floor, are located within the current 40 foot minimum front yard depth for the SRB District. There was a prior variance (Decision #1812) for a rear addition to this house.

The Macys stated that they have spoken with neighbors and heard no opposition. Mr. Macy submitted a letter of support signed by five households on Lucerne Drive. The Macys believe that, with the addition of the porch, the house will conform more in appearance with the character of the rest of the neighborhood.

There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the public hearing. Magenheim seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board deliberated.

Brown submitted the deed referring to the shown on a plan dated July 1955. At the March 1955 Town Meeting, the 40' front setback was voted, however the plan was most likely recorded prior to the effective date of the setback change. The structure can therefore be considered pre-existing, non-conforming. Bargnesi made a motion to approve the special permit under Art. VIII, §3.3.5 with findings that the structure is pre-existing, non-conforming and to deny the variance from Art. VIII, §4.1.2 as moot. McDonough seconded the motion and the Board voted (5-0) to grant the special permit with conditions and deny the variance as moot. Brown will write the decision.

In addition to the written application, the following documents and materials were received by the Board and considered at the public hearing:

- Copy of ZBA Decision #1812 (filed April 29, 1986) for 50 Lucerne Drive.
- Certified Plot Plan of 50 Lucerne Drive, prepared by John Abagis & Associates, dated August 12, 2015.
- Architectural drawings titled "Macy Residence," prepared by Verdeco Designs: Pages EX1.0, EX2.0, EX3.0, EX4.0 (dated 1 April 2015; Pages A1.0, A4.0, S0.0, S1.0, S2.0 (dated 16 June 2015).
- Copy of Quitclaim Deed for 50 Lucerne Drive, N.E.R.D Book 9179, Page 189.
- Memorandum in support of the proposal, dated September 26, 2015 and signed by residents of 5 households on Lucerne Drive.

Approval of Minutes of 9/3/15:

Bordonaro corrected the minutes to reflect her absence. Oltman made a motion to approve the minutes of 8/6/15 with Brown and Bordonaro's revisions as submitted by email. There being no other revisions or corrections, Faulk seconded the motion to approve the minutes and the Board voted (8-0) (Magenheim abstained) to approve the minutes as revised.

Discussion Items

Meeting start time: At the suggestion of Carol McDonough, the Board by consensus agreed to change the starting time of its meetings from 6:30 p.m. to 7:00 p.m., effective with the November meeting

The Board then took a break since the next agenda item was posted for 7:30 p.m.

Petition Number: Z-15-57

Premises Affected: 503 S. Main St.

Petitioner: Primrose

Relief requested: Variances §6.6.2.1.c and §5.2.8.1.b to construct a daycare that exceeds 3,000 sf and a sign that exceeds the maximum allowed area and height

Members sitting: Brown, Magenheim, McDonough, Bargnesi, Rechisky (for Oltman)

Alternates: None

Attorney Mark Bobrowski was present on behalf of the Petitioner. Also present for the petitioner was Engineer Bill MacLeod and Robert Rossman, RE Manager for Primrose. Bobrowski submitted a Building Program and a memo dated 10/1/15 in response to Attorney Swiniarski's submittal of 10/1/15. MacLeod reviewed the changes

to the sign and light designs: decreased sign size with option of either posts or monument style support and up-light illumination during operational hours; down lights on building for security. The Board discussed the sign style in relation to other institutional signs on South Main Street, the size of the sign for safety reasons, landscape design and buffering, sight line at entrance, the lighting plan (MacLeod submitted cut sheets for the lights to be referenced in the decision), and the exemption of educational uses under Ch. 40A, Sec. 3, in particular, which facilities are covered by Section 1A, Ch. 15D. Bobrowski argued that Ch. 15D, §1A only relates to non-home based childcare facilities of more than six children. Considering the zoning bylaw's restriction of a maximum of 3,000 square feet for the facility, Brown asked how many children could be accommodated. Robert Rossman, of Primrose, stated that only 30-40 children could be accommodated. The Board discussed what other daycares have for enrollment figures.

Nancy Simili, property owner of the lot where Kinder Care is located, stated that the KinderCare facility is 7,500 sq. ft. and has 120 children. Bobrowski cited the ZBA's decision for Next Generation with a 19,000 sq. ft. facility. He reminded the Board that he feels a variance is not required per section 3 of Ch. 40A, despite being advised otherwise. Brown asked the ZBA's Administrative Secretary regarding the email received on 10/1/15 from the opposition's attorney withdrawing their opposition. Bobrowski summarized his memo of 10/1/15 in response to Swiniarski's submittal on behalf of Kinder Care and reminded the Board that the reason they filed with the ZBA is because Town staff advised them to do so, not because they believe that they need a variance. The 3,000 sq. ft. limitation can be applied if reasonable. In this case, it is not financially reasonable. Bobrowski further argued that in this case, hardships can also relate to structures. The existing synagogue can't be re-used for the intended purpose and the site has topographical issues (slope downward away from street).

Brown suggested closing the public hearing and continuing to 11/5/15 for the purpose of discussing and reviewing a draft decision which will be drafted ahead of time. The Board agreed with this suggestion. Noting that the public hearing had been continued for two months at the request of the Applicant, Brown asked for an extension of time for the Board to file a written decision. Bobrowski agreed. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and to close the public hearing.. Magenheim seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The administrative secretary will distribute the electronic version of the draft decision.

The Board then deliberated. Bargnesi, Magenheim, Rechisky, and McDonough all stated their support for the proposal. Brown noted that two other childcare facilities in the neighborhood have been granted variances, one of which is larger, and therefore it is consistent with the Board's prior actions to grant the requested variance in this case. Bargnesi made a motion to approve the requested variance with the finding that the hardship exists, as stated in the Walker Case and in Attorney Bobrowski's draft decision. McDonough seconded the motion and the Board voted (5-0) to grant the variance.

The Board then deliberated the requested variance for the sign. Brown commented that the design is not in character with the neighborhood, but he is willing to vote for a variance with the restriction that the sign not be any larger than the maximum width and height of the other signs in the neighborhood. Rechisky noted the proposed sign's similarity to the signage at the medical center on Lowell Street. Bargnesi confirmed that the proposed sign is as depicted on the plan received 9/23/15 as a 9' wide by 5'5" high sign. Brown suggested approving a variance with the restriction that the overall sign not exceed 9' x 5' 6" and that it shall be otherwise in conformance with the submitted plan and maintain a clear sight line, removal of overhanging pine branches, and the incorporation of the Planning Board's Site Plan Certificate of Approval, and to move the mailbox further back. In regards to lighting, condition #14 of the Planning Board's decision, the lighting cannot create a nuisance, spill-over or glare onto abutting properties. It is the property owner's responsibility to ensure that these conditions are met. The Board suggested adding the condition that the lights shall be turned off at closing

time. Bargnesi made a motion to grant a variance for the sign with the aforementioned conditions. Magenheim seconded the motion and the Board voted (5-0) to grant the variance with conditions. Brown will revise Bobrowski's draft decision. Magenheim made a motion to adjourn the deliberation until 7 pm on 11/5/15. This will be the first agenda item.

The following additional documents and materials were received by the Board and considered at the continued public hearing:

- Memorandum from Jacki Byerley, Planner, to Christopher Clemente, dated September 10, 2015, summarizing Site Plan Certificate of Approval for 503 South Main Street, received by the Board on Sept. 11, 2015.
- Updated sign plan, received by the Board on September 4, 2015, designated by the Board as the "primary" design.
- "Alternate" sign plan depicting sign design with 6'0" high brick pillars.
- Photographs and descriptions of "Institutional Free-standing Signs on South Main Street," compiled 9/3/2015 by D.W. Brown.
- Property data card from Andover MiMAP for KinderCare facility at 500 So. Main St., received by the Board on September 16, 2015.
- "Building Program" table for Primrose School – MA, dated 12/18/2011.
- "Traffic Impact Assessment, Proposed Primrose School, Andover, MA," prepared by Vanasse & Associates, dated August, 2015, as received by the Planning Division on August 25, 2015.
- Memorandum from Attorney Christopher A. Swiniarski to Barbara Burke, dated September 30, 2015 and received by the Board on October 1, 2015, summarizing applicable case law, including copies of 8 cases cited in the memorandum.
- Memorandum from Attorney Mark Bobrowski to Zoning Board of Appeals, dated October 1, 2015, in response to memorandum from Attorney Christopher A. Swiniarski.
- Copy of email from Christopher A. Swiniarski to Barbara Burke, sent October 1, 2015 at 3:07 PM.

Petition Number: Z-15-104

Premises Affected: 29 Central St.

Petitioner: Parish of Christ Church

Relief requested: Variance from Art. VIII, §5.2.8.1.a and/or special permit under Art. VIII, §5.2.8.b to erect a free-standing sign that will exceed the maximum sign area

Members sitting: Brown, Magenheim, McDonough, Bargnesi, Rechisky

Alternates: Bordonaro, Faulk

No one was present on behalf of this petition. Bordonaro made a motion to continue the public hearing without opening to 11/5/15. Faulk seconded the motion and the Board voted (5-0) to continue the public hearing without opening to 11/5/15.

There being no other business of the Board, Bargnesi made a motion to adjourn the meeting. Magenheim seconded the motion and the Board voted unanimously (7-0) to adjourn the meeting at 8:42 p.m.

Respectfully submitted,
Barbara Burke
Administrative Secretary